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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/775,196 | 02/11/2004 | Peter Yang | 3123-118 | 1632 |

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TROXELL LAW OFFICE PLLC
SUITE 1404
5205 LEESBURG PIKE
FALLS CHURCH, VA 22041

EXAMINER

NGUYEN, THUAN T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2685

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,196

Applicant(s)

PETER YANG

Examiner

THUAN T. NGUYEN

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(e) as being anticipated by McCullough et al. (U.S. Patent Pub No. 2004/0252487 A1).

Regarding claim 1, McCullough discloses “a color illuminating earphone, comprising an illuminating component disposed in one selected from the collection of an earplug, an earpiece, a control board, and their combinations, an earphone cable wrapped by a transparent material having a light guiding effect, and chip of said control board providing variations to the illumination of a light source” (Fig. 1, and page 2, section 0011-0013 and page 3/section 0031 as different light colors as light guiding effect in providing variations to the illumination of a light source, and Fig. 8 as circuitry of a control board).

As for claim 3, in view of claim 1, McCullough suggests “wherein said earphone illuminating wire includes a substance selected from the collection of metal particle and

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an illuminating material to enhance a light diffusion effect of said earphone illuminating wire" (Figs. 7, 8 & 10, and page 3, section 0034-0035).

As for claim 4, in view of claim 1, McCullough shows "wherein said electronic circuit control board comprises a battery set for supplying electric power to said control board for the operation of said illuminating components disposed on said control board" (Fig. 8/item 30 for a battery within the circuitry).

As for claim 5, in view of claim 1, McCullough shows "wherein said illuminating component is used selectively in an ear-hanging type earphone and a back-hanging type earphone to illuminate said illuminating wire and said illuminating earpiece" (Figs. 1-3 for ear-hanging type earphone or back hanging type earphone addressed).

As for claim 6, in view of claim 1, McCullough discloses "wherein said illuminating components are used in a large color illuminating noise-proof earphone, so that said warning light, earpiece, and earphone cable produce a constant blinking light", i.e., a large noise-proof earphone is shown (Fig. 1) which provides constant blinking light LEDs at 10 & 11, and page 3, section 0031).

Claim Rejections - 35 USC 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCullough et al. (U.S. Patent Pub 2004/0252487 A1) in view of Larson (US Patent 5,608,794).

As for claim 2, in view of claim, 1, McCullough does not disclose "wherein said illumination effect produces a variation to said light source according to one selected from the collection of frequency, volume, and constant frequency of a sound source"; however, Larson teaches a headset with illuminating lights which can be responded to sound or to voice signal as the sound can be detected for in-use or during communication (Larson, Figs. 1-2, and col. 1/line 45 to col. 2/line 5 & col. 2/lines 24-62). Therefore, it would have been obvious to one of ordinary skill in the art to modify McCullough's apparatus with the feature as taught by Larson in order to provide a portable headset that can produce a variation to said light source according to one selected from the collection of frequency, volume, and constant frequency of a sound source as claimed.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

McClanahan, Hijii, DeLeon, Ruppert et al., and Wingate (PTO-892 attached) disclose some types of headset or headphones with illumination.

6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

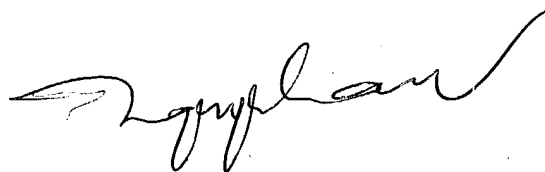
(703) 872-9306, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II,

2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony Thuan Nguyen whose telephone number is (703) 308-5860. The examiner can normally be reached on Monday-Friday from 9:30 AM to 7:00 PM, with alternate Fridays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.



**TONY T. NGUYEN
PATENT EXAMINER**

Tony T. Nguyen
Art Unit 2685
December 22, 2004